

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COUNTY OF BEAVER)	FCC File Nos. 0000843248, 0000772245
)	
Request for Extension of Time to Construct)	
800 MHz Public Safety/Special Emergency)	
Trunked Station WPKM927, Beaver,)	
Pennsylvania)	
)	
Application for Renewal of Station WPKM927)	

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 2003

Released: September 23, 2003

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Memorandum Opinion and Order* addresses a petition for reconsideration ("Petition") filed by the County of Beaver ("County").¹ The Petition requests reconsideration of the decision² by the Licensing and Technical Analysis Branch ("Branch"), Public Safety and Private Wireless Division, to dismiss the County's request³ to extend the construction period for 800 MHz Public Safety/Special Emergency Trunked Station WPKM927, Beaver, Pennsylvania. The County's Petition also urges that we grant its pending application to renew the license for Station WPKM927.⁴ For the reasons discussed below, we grant the County's Petition with respect to the Branch's action on the County's extension request to the extent indicated. Further, as explained more fully below, we take no action on the County's pending renewal application for Station WPKM927 at this time.

2. *Background.* On May 5, 1997, the County was granted authorization to operate Station WPKM927.⁵ Pursuant to the Commission's extended implementation ("slow growth") rules, the County was afforded five years in which to construct and place its system into operation, *i.e.*, until May 5, 2002.⁶ On February 14, 2002, the County filed an application to renew its license for Station WPKM927.⁷

¹ Petition for Reconsideration filed by the County of Beaver (County), dated May 3, 2002 (Petition).

² See Reference No. 1383567, dated Apr. 15, 2002 (Dismissal Letter).

³ See FCC File No. 0000843248, filed Apr. 10, 2002 (Extension Request).

⁴ See FCC File No. 0000772245, filed Feb. 14, 2002 (Renewal Application).

⁵ The County's license was granted by waiver of Section 90.621(b)(4) of the Commission's Rules. See 47 C.F.R. § 90.621(b)(4) (co-channel separation requirement).

⁶ See 47 C.F.R. § 90.629 (extended implementation period). The County's license expressly stated that "[f]ailure to certify annually as to station construction commitments will terminate the authority for the extended implementation period and will require complete system construction within six months of the first missed annual certification date."

⁷ See Renewal Application.

3. On April 10, 2002, the County submitted a request for a one-year extension of its construction period because “we are not sure what direction we are going.”⁸ The County stated that in July 2001, it hired SSI Services (“SSI”) to conduct a study of the County’s communications system. Notwithstanding assurances that the study would be completed in January 2002, it was not. As a result, the County was still unable to determine the best course of action.⁹ In this regard, the County indicated that it was relying on the SSI study to prepare and submit a construction schedule with its Renewal Application.¹⁰ The County noted that “[w]hen the study is complete if we decide not to pursue 800 MHz we could immediately turn over the license.”¹¹

4. By letter dated April 15, 2002, the Branch dismissed the County’s extension request, concluding that the County had not demonstrated any unique or substantial justification for an extension.¹² The Branch further concluded that the County had not demonstrated a commitment to funding and constructing the radio facility.¹³ Thus, the Branch notified the County that Station WPKM927 must be constructed and operational by May 5, 2002, or its license would cancel.¹⁴ The Branch suggested that the County file a new application to re-license the facility after it was in a position to meet the construction requirements.¹⁵

5. On May 3, 2002, the County filed a petition for reconsideration of the Branch decision, and requested grant of its pending Renewal Application for Station WPKM927.¹⁶ In support of the requested relief, the County provides new information concerning the circumstances underlying its failure to construct, its commitment to completing construction, and the critical need for its proposed communications system. The County explains that its failure to construct its 800 MHz radio system within the five-year construction period was due to extenuating circumstances.¹⁷ The County states that it was previously financially unable to proceed with a new system, but has now made a financial commitment of approximately \$70,000 to implement these 800 MHz frequencies.¹⁸ The County advises that its consultant, SSI, is in the process of identifying new tower sites, conducting radio propagation projections, researching the County’s public safety radio system needs, and preserving viable technical options with estimated costs utilizing the 800 MHz frequencies authorized for Station WPKM927.¹⁹ The County further notes that SSI’s research will assist it in selecting the best viable technical solution, system design and implementation of a new public safety radio system.²⁰

6. Additionally, the County asserts that it is critical to all public safety entities and the citizens of the County that the requested relief is granted in order to allow implementation of a County-

⁸ Extension Request at 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *See* Dismissal Letter.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Petition at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

wide public safety radio system and achieve interoperability with the Commonwealth of Pennsylvania's statewide system.²¹ The County states that its fifteen- to twenty-year old public safety radio systems, which are on different frequency bands, are in dire need of replacement.²² It further states that severe interference and lack of interoperability are daily problems that must be resolved.²³ Finally, the County asserts that Federal agencies, including the Department of Homeland Security, desire that it replace its obsolete and greatly inadequate radio systems.²⁴

7. *Discussion.* We are mindful that local governmental entities often must satisfy administrative requirements for funding that are more cumbersome than those faced by other Part 90 private land mobile radio eligibles. In this connection, the Commission provided for extended implementation periods for stations licensed under Part 90 in an effort to accommodate entities that require a longer period of time to plan, fund and implement their systems.²⁵ We also recognize, however, that one of the trade-offs of providing slow growth opportunities is that the channels are unused or underutilized during a portion of this time, which could be to the disadvantage of other applicants. Thus, we require licensees of slow growth systems to demonstrate that they are implementing their systems in a diligent and expeditious fashion.²⁶

8. As an initial matter, we conclude that the Branch correctly found, based on the information then before it, that the County's initial extension request provided no unique circumstance or substantial showing warranting grant of the requested relief. The record before the Branch reflected that the County had been licensed for nearly five years, failed to meet its construction commitments, expressed limited commitment to utilizing the subject 800 MHz frequencies and provided no assurance that it would implement its authorization. The County provided no other reason as to why it had not met its construction commitments. To the extent that this omission was caused by the consultant's failure to complete its study, the County must bear the responsibility for that failure because SSI was acting as the County's agent.²⁷ In light of these factors, we find that the Branch's analysis of the County's initial

²¹ *Id.* at 2.

²² *Id.* at 1.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ See Amendment of Part 90 of The Commission's Rules to Designate Frequencies in the 806-821 and 851-866 MHz Bands for Slow-Growth Land Mobile Radio Systems of Utilities and Public Safety Agencies, *Report and Order*, PR Docket No. 79-191, 85 FCC 2d 56 (1980); Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-21/851-866 MHz Bands and to Adopt Rules and Regulations Which Govern Their Use, Amendment of Part 90 of the Commission's Rules to Facilitate Authorization of Wide-Area Mobile Radio Communications Systems, An Inquiry Concerning the Multiple Licensing of 800 MHz Radio Systems ('community repeaters'), Amendment of Section 90.385(c) of the Commission's Rules to Allow Transmission of Non-Voice Signals at 800 MHz, *Second Report and Order*, PR Docket No. 79-191, PR Docket No. 79-334, PR Docket No. 79-107, PR Docket No. 81-703, 90 FCC 2d 1231 (1982).

²⁶ The Commission has said spectrum for the private land mobile radio services is scarce, and we do not intend to allow channels to remain encumbered under the protection of our slow-growth rules. See Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, *Report and Order*, PR Docket No. 92-210, 8 FCC Rcd 3975, 3977 ¶ 13 (1991). In this connection, the Commission extended the now-defunct finder's preference program to licensees authorized under extended implementation to the same extent as to other authorizations, *i.e.*, by permitting "finders" to identify and acquire channels not constructed and placed in operation. *Id.* at 3977 ¶ 14.

²⁷ See generally Town of Jaffrey, *Order*, 17 FCC Rcd 3493, 3494-94 ¶ 5 (WTB PSPWD 2002) (licensee bears full responsibility for actions or omissions of its agent in filing renewal application); ACC Network, *Order*, 16 FCC Rcd 2246, 2248 ¶ 6 (WTB PSPWD 2001); JSM Systems, Inc., *Order on Reconsideration*, 15 FCC Rcd 23743, 23744 ¶ 4 (WTB PSPWD 2000) (dismissal of application upheld where frequency coordinator failed to submit information in a timely fashion); Denver Partners, *et al.*, *Order*, 13 FCC Rcd 14051, 14053 ¶ 6 (WTB CWD 1998) (citing RDH (continued....))

extension request was proper.

9. Nonetheless, the County's Petition presents new information to demonstrate that grant of the extension request is warranted. Section 1.106(c) of the Commission's rules provides that new facts may be presented in a petition for reconsideration only if the facts relate to events that occurred or circumstances that changed since the last opportunity to present such matters; the facts were not known to the petitioner, and could not reasonably have been learned, prior to such opportunity; or the public interest requires consideration of the facts.²⁸ Because denial of the requested relief would implicate the County's proposed public safety radio system, we believe that the public interest will be served by consideration of the new information presented by the County.²⁹ We now turn to whether grant of a construction extension is warranted in light of the additional information.

10. The record reflects that the County's overall goals are to upgrade and consolidate its public safety communications resources and achieve interoperability with Pennsylvania's statewide system and homeland security. These goals are clearly within the public interest. The record further reflects that the County has invested \$70,000 in the proposed system by hiring SSI to assist with selection of the best viable technical solution, system design and implementation of the proposed public safety radio system. This new information demonstrates the County's continuing commitment to constructing Station WPKM927, and its need for the license. Based on the cumulative circumstances described in the record, we conclude that it would be in the public interest to provide the County a further opportunity to construct and implement this critical public safety communications system.

11. Accordingly, we grant the County's request for a one-year extension of the construction deadline. Construction of Station WPKM927 must be completed within one year of the release date of this order, or by September 23, 2004.³⁰ Based on the County's lack of activity with regard to construction of this station, however, we believe that certain conditions should be imposed to ensure that the County acts diligently to construct the system. First, we advise the County that no further extensions will be contemplated unless construction has commenced, at the very least, or a firm timeline for construction is presented along with supporting documentation, such as signed contracts. Second, we will condition our grant of the County's request on the filing of quarterly status reports.³¹ Such reports must provide information on the progress that has occurred with regard to implementation of the system. If no progress has been made, we expect the County's report to explain the lack of progress.

12. As noted above, the County's renewal application for Station WPKM927 remains pending. Because the County has thus far failed to commence construction, we do not, at this time, have any basis for determining whether the County has met the standard for license renewal. Thus, we will retain the County's renewal application in pending status until the extended construction period granted

(...continued from previous page)

Communications, Limited Partnership, for Construction Permit for a New FM Station on Channel 297A in Baker, Louisiana, *Memorandum Opinion and Order*, 6 FCC Rcd 4764, 4764-65 (1991)) ("the applicant bears the full burden of its (or its agents') failure to file a complete application").

²⁸ See 47 C.F.R. § 1.106(c).

²⁹ See, e.g., *Southwest Central Dispatch, Order on Reconsideration*, 17 FCC Rcd 15633, 15636 ¶ 7 (WTB PSPWD 2002).

³⁰ We note that if the County fails to complete construction by the new deadline, the license will be cancelled. 47 C.F.R. § 90.629(c). The County will not be entitled to the additional six-month period set forth in Section 90.629(c), as that provision applies only when the Commission terminates authority for an extended implementation, and not when an extended implementation period expires by its own terms.

³¹ The quarterly status reports should be filed using Form 601, the same as the annual status reports required under 47 C.F.R. § 90.629(c).

herein has expired. At the end of this period, we will evaluate the application and take appropriate action.

13. *Conclusion.* We conclude that the public interest would be served by granting the County a one-year extension to complete construction of 800 MHz Public Safety/Special Emergency Trunked Station WPKM927. No further extensions will be contemplated unless construction has begun or the County submits a firm timeline with supporting documentation. In order to promote the Commission's overall objective of placing scarce spectrum resources into operation, we will require the County to file quarterly status reports. Additionally, the County's application for renewal of the license for Station WPKM927 will remain pending until the expiration of the construction period, at which time appropriate action will be taken based upon the County's construction progress, or lack thereof.

14. *Ordering Clauses.* Accordingly, IT IS ORDERED, pursuant to the authority of Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by the County of Beaver, on May 3, 2002 IS GRANTED to the extent indicated herein.

15. IT IS FURTHER ORDERED, that County of Beaver's request for a one-year extension of the construction deadline for 800 MHz Public Safety/Special Emergency Trunked Station WPKM927 IS GRANTED with the conditions set forth in paragraphs 11 and 13 *supra*.

16. IT IS FURTHER ORDERED, that the application for renewal of the license for Station WPKM927, FCC File No. 0000772245, filed February 14, 2002, WILL REMAIN PENDING until expiration of the construction extension granted herein.

17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau